

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

August 2004

THE IMPORTANCE OF NEWDOW

When the U.S. Supreme Court announced its decision in "the Pledge case"—otherwise known as Elk Grove Unified School District v. Newdow— in June, pundits pooh-poohed the court for trying to escape the "real" issue.

But the custody decision in Newdow is actually more important in a practical sense for schools than a court determination about the merits of the phrase "under God," though less sexy.

Newdow claimed the right to direct his daughter's religious upbringing. The Supreme Court ruled that he didn't have that right based on a court order from the family court in California.

The order prevented Newdow from asserting a position on behalf of his daughter in court against the wishes of the custodial mother.

If Newdow thinks the mother is doing something detrimental to his daughter by allowing her to be subjected to the Pledge, he can return to family court, or so ruled the U.S. Supreme Court.

Newdow reaffirms what the school officials have long known—the school doesn't have to decide custody issues.

Even where there is joint custody, the school can choose to provide daily information to one parent— the one with primary physical custody.

Primary physical custody is determined by explicit court order or by doing the math in the custody schedule. Whichever parent has even one minute more time with the child is the primary

physical custodian.

If the non-custodial parent wants to be in on every parent-teacher conference, wants a say in what classes the student takes, or wants grade reports sent directly to him or her, he or she must work out those details with the custodial parent and/or the family court.

Non-custodial parents have equal rights of access to the student's records, but, as Newdow recognizes, they don't need to be notified every time Johnny skins his knee.

If a non-custodial parent wants more say in a child's education, he or she needs to return to the court and seek primary physical custody, or establish a better parenting relationship with the primary custodian.

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UPPAC Cases of the Month

The majority of UPPAC cases that result in suspension or revocation of a license are resolved through a Stipulated Agreement.

Stipulated Agreements are typically used when an educator does not want to contest the allegations against him or her in an administrative hearing. The agreements set forth the allegations, the educator's response to the allegations, if requested, and the conditions an educator must meet before seeking reinstatement of the license.

If the educator meets the conditions, the Stipulated guarantees him or her the **opportunity to request** a reinstatement hearing. Stipulated Agreements do not guarantee the educator will get his or her license back. Nor do the agreements guarantee that the educator will get a reinstatement hearing.

What the state promises in the agreements is that the educator will have an uncontested op-

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UPPAC CASES

- The Utah State Board of Education.
- The Utah State Board of Education reinstated Richard David Munro's license.
- The Utah State Board of Education revoked Thomas Reese's license for failing to protect students from harm.
- Thus far: 26 cases opened,

Suspensions :

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Eye On Legislation

In June, we provided a brief overview of our U.S. Senators' views on education, as revealed on their websites. Now we turn to the House of Representatives.

In the First District, Rep. Rob Bishop has little to say on education—at least through his website. His Issues page gives a brief explana-

tion of his stand on education—he is for local control, for vouchers, and for tuition tax credits



lease on education—an article about his return to the classroom, teaching A.P. classes during a congressional break. Rep. Jim Matheson in the Second District has far more to say about education, and he has acted more



directly on education issues.

Matheson sponsored an amendment to the Elementary and Secondary Schools Act that would give rural teachers more time to meet the highly qualified standards of NCLB and would allow all teachers to use their college minors to meet the standard.

Matheson also co-sponsored legislation that would give states greater flexibility in determining how test results for special education students factor into a school's performance ratings. The legislation would also render NCLB moot if Congress fails to appropriate enough money to pay for the reforms.

Rep. Chris Cannon in the Third District has been involved in education issues as well. Throughout 2003 to April of 2004, Cannon continually pushed Congress to expedite land exchanges between federal lands and the state's school trust lands.

Cannon also helped orchestrate a visit from U.S. Department of Education officials to the Utah Legislature to



discuss Rep. Margaret Dayton's bill to opt out of NCLB.

Cannon is the only one of Utah's representatives who voted against a resolution recognizing the benefits of schoolbased music educa-

tion programs.

Recent Education Cases

Two of Utah's finest school districts were involved in court rulings in May.

Wayne County School District won an important transportation battle in the federal 10th Circuit Court of Appeals.

Mom and her two kids sued the district after officials declined to realign a bus route to accommodate the family.

The family lives roughly three miles from the bus stop in a

sparsely populated area. The district does not have a closer bus stop because there aren't enough kids in the area to satisfy the State Office'



rule that there be a minimum of 10 children to create a bus route.

Instead, Wayne District reimbursed the family for the cost of driving the kids to the bus stop.

The family noted that the district had made exceptions to the 10 student rule in the past. They argued that, by denying their request for an exception, the district was discriminating against them.

Wayne argued that it had applied a reasonable cost-benefit analysis and found the requested route

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UPPAC cases cont.

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portunity to request a reinstatement hearing.

If UPPAC grants the hearing, the state may then contest reinstatement, but the educator will be able to focus on what he or she has done since the allegations arose rather than trying to disprove the allega-



In the usual case, it is much easier

and less costly to obtain and present evidence of what an educator has done than to find witnesses and evidence to combat an allegation of misconduct. This is particularly true in cases where the evidence against the educator is fairly straightforward and conclusive—the kind of cases that usually end with a stipulated agreement.

Again, we stress that Stipulated Agreements do **NOT** guarantee an educator will be reinstated or will even be granted a reinstatement hearing by UPPAC. The agreements simply provide the educator a means for resolving a case quickly, at minimal expense, and with less personal anguish, with the promise that, if all other conditions are met, the educator will be able to request reinstatement.

Utah State Office of Education

UPPAC Member Profile—

Nancy Parker is one of the six UPPAC members who represent classroom teachers on the Commission. She has taught in the Salt Lake City School District for 20 years and currently teaches in a special program for academically talented students called the Extended Learning Program.

Ms. Parker began her career at Ensign School in Salt Lake District. She has taught primarily fifth and sixth grades at various schools throughout the district.

In addition to her UPPAC appointment, Ms. Parker has been

appointed to the National Education Association Review Board,

the National Council of Accreditation of Teacher Education (NCATE) Board of Examiners and currently serves on the NCATE Specialty Areas Studies Board.

Ms. Parker is serving her first three-year term



Photo not available

with UPPAC. She "joined UP-PAC after spending nearly twenty years with the Salt Lake Teachers Association as Chair of the Professional Rights and Responsibilities Committee which is similar in its duties. I enjoy the collegiality and the opportunities to learn new skills."

Outside of work, Ms. Parker enjoys gardening, cooking and traveling with her husband. "We both love finding good food in exciting cities."

Your Questions

Q: What do you do when a noncustodial parent calls from out-ofstate to find out why their child has been removed from school?

A: Verify the parent is the parent through whatever means give you the greatest sense of comfort, and provide the student's records to the parent.

The Federal Family Education Rights and Privacy Act grants all parents the same rights of access to student records. Barring a court order specifically prohibiting the What do you do when...?

non-custodial parent from accessing the records, he is entitled to view his child's education records.

Typically, that means the school must provide the parent an opportunity to come in and look at the records. Where the parent lives out of state, the school cannot insist that he come in to the school to see the records. It may send him or her copies.

But it should not do so until it has received sufficient proof that the parent is the parent. The school may insist that the parent fax a copy of the student's birth certificate and the parent's own driver's license, or whatever other proof will satisfy the school.

Q: Who will represent me if a par-

Recent Cases Cont.

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(which required an out and back trip over dirt road) was

not economically feasible.

The 10th Circuit upheld the District's determination as reasonable in light of the district's interest in costeffective bus service.

Jordan District was less successful in its appearance before the Utah Supreme Court.

Jordan appealed a lower court de-

cision which allowed Sandy City to charge the district a storm sewer

> drainage fee. The district argued that the state law applicable to cities enumerates the charges a city can impose on a district. Storm sewer drainage fees are not listed in the statute.

Sandy City argued that the list of acceptable charges related only to land use development fees. Therefore, the city claimed, districts are not

immune from service fees, like the storm drain fee.

The Supreme Court agreed with Sandy City, ruling that the section prohibiting cities from imposing fees relates only to land use development and does not protect districts from fees associated with services the district uses. The court ruled that the district does use, and benefits from the storm sewer drainage system.

The court did not rule, however, on the reasonableness of the actual fee charged, and other issues, which may be the subject of future adjudications.

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

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ent threatens to sue.

A: It depends on the accusations. If the parent claims an educator failed to supervise his child on the playground, and the educator was not in gross violation of school policy when he or she was supervising the playground, representation will be provided by the district and/or state risk management.

If, on the other hand, the allegation is, for example, that the educator inappropriately touched the child, the educator will have to find his or her own legal counsel.

Bad acts that occur at work but are not part of the educator's duties as an educator are the educator's responsibility. While others at the school might also be sued in connection with the educator's activities, the educator is on his or her own to defend against the suit.

The fear of false claims is very real for educators and state law provides some protection. If an educator is sued for alleged bad acts that occurred as part of the educator's duties, and the claims

are proven to be false or fraudulent, the educator can seek reimbursement for his or her reasonable attorney's fees.

Q: A teacher provided my son with additional reading material for an

English class that contained sexually explicit content, is this allowed?

A: Not without parental consent and in accordance with district policy.

Any materials a teacher provides to a student should be screened first to ensure the materials fit within the school district's accept-

able materials policies.

In addition, materials that touch on personal matters such as sexuality, or other topics listed in Utah's FERPA law, 53A-13-302, should not be given to students without discussing the materials with a parent first.

Educators are encouraged to provide students with additional materials the educator thinks would further inspire or aid the student, within the

policies established to protect students and teachers.